

Appeal from the Colorado State Office, Bureau of Land Management, denying reinstatement of oil and gas lease C-16989-B.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

The sending of an unsigned check for the annual rental of an oil or gas lease does not constitute timely payment, even if received on or prior to the anniversary date of the lease. BLM has no obligation to present an unsigned check for payment since such a check is not a negotiable instrument.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified when based on ignorance of the applicable law and regulations requiring payment on or prior to the lease anniversary date.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

A contention that appellants were unclear as to the anniversary date of the lease which thereupon resulted in an untimely payment of the rental will not be sustained where the Department's records correctly show the anniversary date, or the lessee has actual knowledge of the correct due date prior thereto.

APPEARANCES: Arthur J. March, Jr., Esq., Fort Collins, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

C. J. Streit and Bernard J. Streit appeal from the February 20, 1979, decision of the Colorado State Office, Bureau of Land Management (BLM), denying their request that oil and gas lease C-16989-B be reinstated.

Appellants obtained the oil and gas lease through an assignment from the Great Basins Petroleum Company, effective April 1, 1978. Great Basins Petroleum Company had acquired the lease from Sam Day who was the original lessee.

Appellants had been sent erroneously two courtesy billings in late December 1978 indicating that rental payments were due on or before January 1, 1979, for oil and gas leases C-16989-B and C-21938-B. Oil and gas lease C-21938-B was nonexistent, and the transmittal of a courtesy billing for that lease was due to an error on the part of BLM. Pursuant to the billings appellants remitted and BLM timely received an unsigned check dated December 28, 1978, for the billed amount. On January 4, 1979, appellants received a call from BLM advising them that the check was unsigned and would be returned to them. Appellants immediately signed and remitted a new check which was received by BLM on January 8, 1979. This check was deposited and paid. ^{1/} On February 2, 1979, appellants petitioned BLM for reinstatement of the lease. Additional correspondence was received by BLM on February 6, 1979, which was considered as part of the petition for reinstatement.

BLM, by decision dated February 20, 1979, denied appellants' petition for reinstatement stating as the reason that appellants had failed to show that the failure to pay the advance rental timely was not due to a lack of reasonable diligence or was justifiable. BLM rejected appellants' argument that inasmuch as neither bill indicated

^{1/} A certain degree of confusion was engendered below concerning the first payment. When the original check was returned to the appellants, one of their employees, who was authorized to sign remittances, proceeded to sign the check and returned it to BLM. Apparently, appellants were not informed of this action. On January 29, 1979, BLM returned this check again, noting that the payment was untimely. When appellants received this check, which was now signed, they wrote to BLM arguing that the check had, in fact, been signed when originally submitted. Subsequently, however, appellants became aware of the circumstances of the affixing of the signature on the check, and they do not presently argue that the original check was signed when it was received by BLM on January 2.

that the payment was due for an oil and gas lease they were prevented from exercising reasonable diligence in remitting payment, or that they were justified in failing to submit a collectible remittance. BLM stated that "since no collectible check to pay for the rental for lease C-16989-B was forwarded to this office until after the due date, this office is precluded from finding that failure to pay on time was not due to a lack of reasonable diligence." Albert R. Fairfield, 34 IBLA 132 (1978); Dolores M. Heggie, 28 IBLA 272 (1976). BLM also found that "failure of the lessees to make a timely payment was not justifiable" within this Board's interpretation of the provision. BLM further stated that the appellants' "ignorance of the requirement that an oil and gas rental is due on an anniversary date, subject to the penalty of termination of the lease, is not considered a justifiable circumstance."

Appellants argue that failure to sign a check through inadvertence does not constitute a lack of reasonable diligence; in all probability had the check been deposited and presented for payment to the bank, it would have been paid; the confusion as to the payment due, including ignorance of the anniversary date of the lease, constitutes a justifiable circumstance for the failure to make the payment in timely fashion.

[1] Reinstatement of an oil and gas lease is allowed where failure to pay the rental on the anniversary date is shown to be either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 43 CFR 3108.2-1(c). A failure to exercise reasonable diligence in payment of rental is "justifiable" when caused by a factor which is ordinarily outside of the control of the lessee, and occurring in close proximity to the anniversary date of the lease. Adolph F. Muratori, 31 IBLA 39 (1977); Pauline G. Thornton, 17 IBLA 251 (1974). Sufficiently extenuating circumstances must be present so as to affect the lessee's actions. Pauline G. Thornton, *supra*; see John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972); Louis Samuel, 8 IBLA 268 (1972). The word "justifiable" refers to a limited number of instances, where owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. What is clearly not covered are instances of unextenuated forgetfulness, simple inadvertence or ignorance of the regulations. Louis Samuel, *supra*. In the case at bar, the failure to sign the check was an instance of simple inadvertence. As such it is not within the ambit of the word "justifiable" in the above regulations. Auburn C. Hunsucker, 34 IBLA 316 (1978).

As regards appellants' contention that the check might have been honored when it was presented, we would merely note that an unsigned check is not a negotiable instrument. See U.C.C. § 3-104(1)(a); North Valley Bank v. National Bank of Rustin, 437 F. Supp. 70 (N.D. Ill. 1977). BLM had no obligation to attempt to negotiate the first check. Cf. Bertram F. Rudolph, Jr., 39 IBLA 167 (1979).

[2] Failure to make payment of the annual rental on time is not justifiable when it is caused by factors within the control of the lessee. Ignorance of the regulations does not justify late payments. Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (1978); Apostolos Paliombeis, 30 IBLA 153 (1977); L. J. Arrieta, 26 IBLA 188 (1976); Charmaine Bowers, 16 IBLA 204 (1974); Louis Samuel, *supra*. The burden rests with the assignees to apprise themselves of all rules, regulations, and laws bearing on their lease. This responsibility cannot be transferred to BLM.

[3] Appellants place great emphasis on the fact that there was confusion concerning the anniversary date of the lease. When the assignment to appellants from Day was presented to BLM for approval, it contained a statement that the lease had issued with an effective date of August 1, 1975. In actual fact, the lease had issued effective January 1, 1973. Prior to approving the assignment, employees of BLM changed the lease effective date appearing on the assignment to January 1, 1973. As noted above, the assignment was approved effective April 1, 1978.

Appellants cannot be heard to argue that this initial confusion was a causative factor in their failure to timely pay the rental. First, the effective date of the lease was corrected on the assignment prior to its approval. Second, appellants received a courtesy notice prior to the actual due date which gave them actual notice of the anniversary date of the lease. Finally, if appellants believed that the effective date of the lease was August 1, 1975, they would have been required to pay the annual rental on or prior to August 1, 1978. No rental was tendered at that time. Thus, it is clear that appellants were not misled by the original erroneous date contained in the assignment when presented to BLM for approval.

We conclude that appellants' petition for reinstatement was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

